MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
JANUARY 17, 2012

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Tuesday, January 17, 2012, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Jamie Leigh, Lynne Mason, Alan Scherlen, Andy Ball, and Rennie Brantz. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kimberly Brown, Assistant to the Town Manager Jim Byrne, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, Planning Director Bill Bailey, and Downtown Development Coordinator Pilar Fotta.

ANNOUNCEMENTS

Mayor Clawson called the meeting to order and welcomed all in attendance. She noted that anyone wanting to speak during the public comment session would need to sign the public comment sign-up sheet.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young noted that there were no changes to the agenda. Upon a motion by Council Member Brantz, seconded by Council Member Leigh, Council moved to adopt the agenda as presented.

VOTE: Aye - All
Nay - None

CONSENT AGENDA ADOPTION

Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to adopt the following consent agenda items:

Minutes: December 12, 2011 - Special Public Hearing.
December 13, 2011 - Regular Meeting.

Approval of Second Amendment - Memorandum of Understanding and Agreement between the Town of Boone and the Downtown Boone Development Association, Inc.:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA
SECOND AMENDMENT
MEMORANDUM OF UNDERSTANDING
AND AGREEMENT - TOWN OF BOONE
AND THE DOWNTOWN BOONE DEVELOPMENT ASSOCIATION, INC.

NOW COME THE PARTIES to that certain memorandum of understanding and agreement, as amended (hereafter, the "MOU"), relating to the purchase, financing, repair, restoration and future operation of the Appalachian Theater, a property located at 559 West King Street, Boone, North Carolina (hereafter referred to as "the property"), previously titled to Cecil B. DeBoone, LLC, and purchased at foreclosure sale by the TOWN OF BOONE, a North Carolina municipality (hereafter referred to as "the Town"), said original MOU entered into the 25th day of July, 2011, by and between the Town and the DOWNTOWN BOONE DEVELOPMENT ASSOCIATION, INC., a North Carolina non-profit membership corporation (hereafter referred to as "the DBDA"), collectively referred to as "the Parties;" and the parties now wishing to amend the MOU to reflect the circumstances of the actual purchase of the property, and therefore substituting and replacing the original MOU, as amended, with the following terms; the parties hereby agree as follows on this the 5th day of January , 2011 :

W I T N E S S E T H:

THAT, WHEREAS, the DBDA requested that the Town assist it in purchasing the property for the purposes of its repair, restoration and future operation of the Appalachian Theater as a community resource; and

WHEREAS, the Town and DBDA, working together in the endeavors described herein, believe that the preservation of the property and its eventual restoration and operation as a community resource will confer important economic benefits upon the Town's Municipal Service District, (hereafter, the "MSD") and the Town as a whole, that it will strengthen the economic health and stability of the MSD, and that the purchase, repair, restoration and operation of the property constitutes "revitalization," as that term is defined under State law, and is thus an appropriate use of MSD taxes; and

WHEREAS, the DBDA was unable, without the assistance of the Town, to obtain sufficient funding to purchase the property, and the Town was willing to make public funds available for the limited purpose of acquiring the property so that the DBDA could use its resources and skills, once the Town is repaid, to effect the full repair and restoration of the property and to accomplish the further public purposes of the Town by developing and creating the structures necessary to effectuate and maintain the operational success of the future operation of the restored property in the public interest of the citizens of the Town; and

WHEREAS, the Board of Directors of the DBDA, in order to demonstrate to the Town the importance of the property to the future vitality of the MSD, and to enhance the success of this undertaking, proposed and offered to the Town, should the DBDA be unable through its commitment of a portion of currently available MSD funds to repay the Town, or should it appear that its future ability to repay the Town within the time frame described would be inadequate, that it would support and advocate for an increase in the MSD taxes collected of 50% or more, if necessary through a rate increase, so long as the additional taxes collected were fully utilized by the Town to reduce the DBDA's indebtedness relative to this property and to accomplish the DBDA's goals relative to the property; and

WHEREAS, the parties have agreed to certain measures and terms, some of which will require further specific cooperation and agreements, but wish now to confirm by this MOU the general terms to which they have agreed;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, respectively acknowledged by each of the parties hereto as fair and adequate, the parties agree as follows:

1. The Town paid six-hundred-and-twenty-four thousand, five-hundred dollars ($624,500.00) to purchase the property, and the DBDA previously authorized the Town to transfer to itself DBDA funds totaling seventy-five thousand dollars ($75,000.00), thus reducing the amount paid for the property with Town funds to five-hundred-andforty-nine thousand, five-hundred dollars ($549,500.00), considered by the parties, together with such interest as may be charged, a loan by the Town to the DBDA (hereafter, "the loan").

2.a. The DBDA will repay the loan to the Town according to the following terms: The DBDA promises to pay to the Town the principal sum of five-hundred-and-forty-nine thousand, five-hundred dollars ($549,500.00), with interest beginning November 30, 2011, the date that these funds were transmitted by the Town to the Substitute Trustee who handled the sale of the property, at the rate of one per cent (1.000%) per annum on the unpaid balance until paid in full or until default, in annual payments of forty thousand dollars ($40,000.00) each, the first payment due on or before January 15, 2013, plus such amounts as are described herein from the anticipated fundraising campaign, for three (3) years or until paid in full, whichever occurs first, unless payment of the full balance is demanded by Town on the occurrence of an event to be described herein. The Town is hereby authorized to deduct from MSD funds in its possession any portion of the $40,000.00 minimum annual payment which has not been remitted to it in quarterly payments during the prior twelve months from the proceeds of the fundraising campaign described in paragraph 5 herein. If not paid sooner, the full balance of remaining principal and accrued interest shall be due and payable on January 15, 2015.
b. Each installment shall, unless otherwise provided, be applied first to payment of interest then accrued and due on the unpaid principal balance, with the remainder applied to the unpaid principal. Unless otherwise paid with funds which have been raised for this purpose, each

installment shall be paid by means of the Town withholding the appropriate portion of the proceeds of MSD taxes, and the withholding of such proceeds is hereby authorized until such time as the loan is fully repaid. Unless otherwise provided, this loan may be prepaid in full or in part at any time without penalty or premium. Partial prepayments shall be applied to installments due in reverse order of their maturity. In the event of: (a) default in payment of any installment of principal or interest hereof as the same becomes due and such default is not cured within ten (10) days from the due date; or (b) default under the terms of this MOU, and such default is not cured within fifteen (15) days after written notice to the DBDA, then in either such event the Town may, without further notice, declare the remainder of the principal sum, together with all interest accrued thereon, at once due and payable. Failure to exercise this option shall not constitute a waiver by the Town of its right to exercise the same at any other time.

c. The unpaid principal of this loan and any part thereof, accrued interest and all other sums due under this loan, if any, shall bear interest at the rate of one per cent (1.000%) per annum after default until paid.

d. The DBDA hereby waives protest, presentment, notice of dishonor, and notice of acceleration of maturity, and agrees to continue to remain bound for the payment of principal, interest and all other sums due notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this loan or by way of any extension or extensions of time for the payment of principal and interest; and the DBDA waives all and every kind of notice of such change or changes and agrees that the same may be made without its notice or consent.

3. At the time the loan is paid in full, the Town shall transfer title to the property to the DBDA or such newly created non-profit organization to which the parties may subsequently agree (hereafter, "the non-profit") by non-warranty deed and bill of sale as to personal property, eserving for itself a reversionary interest in the property should certain contingencies occur such as the failure of the DBDA or non-profit to operate the property for a valid public purpose, said contingencies to be the subject of further agreement between the Town and DBDA. Following transfer, the DBDA and/or nonprofit shall own and operate the property, although if the DBDA concludes, that a division of ownership and operating responsibilities between the DBDA and one or more non-profit organizations best serves the goals of this agreement and the public, and the Town approves such an arrangement upon the recommendation of the DBDA, such division is not precluded by this MOU. The deed shall contain, at least, restrictions regarding the restoration, maintenance and future operation of the property in order to ensure that the property shall be used in perpetuity for a public purpose and to preserve the cultural, historical and economic value of the property for the benefit of the MSD and the citizens of Boone. The expectation and agreement of the parties is that the "restoration" of the property will strive, to the extent feasible, to reproduce the original "Art Deco" look of the theater consistent with its original design.

4.a. Prior to the transfer of title to the property, the DBDA shall have the sole responsibility for the costs of any repair, alterations, and restoration of the property; however, all repairs must be approved by the Town Manager, following the procedures mandated under State law for such activities by municipalities. During this period, the Town will only undertake such repairs as are needed to protect the property from damage or further deterioration, needed to temporarily improve the appearance of the facade, and needed to make a portion of the property usable by the DBDA during the period during which the full repair and restoration is conducted. The Town shall be the sole arbiter of what repairs and restoration are needed for these purposes. All such repairs and restoration shall be conducted or managed by the Town, utilizing persons or firms sensitive to the goals of the MOU regarding restoration. The Town will promptly undertake the necessary steps to prevent further leaking from the roof and will take such additional measures as are needed to prevent a further deterioration of the property. If authorized by the DBDA, the costs of these repairs shall be deducted from DBDA funds held by the Town; if not so authorized, the cost of such repairs shall be added to the principal amount of the loan, subject to the same terms and conditions as specified by this MOU for the original funds to purchase the property.

b. Subsequent to the transfer of title to the property, the DBDA or the non-profit, as agreed upon by both parties and the non-profit, as applicable, shall be responsible for both arranging and paying all costs of all repairs and restoration. However, in light of the Town's reversionary interest, except for emergency repairs, the DBDA or non-profit shall inform the Town in advance of any and all restoration activity in sufficient time for the Town Council to consider and evaluate whether such activities are in keeping with the restoration goals of this MOU. The

DBDA or the non-profit, as applicable, shall periodically report to the Town Manager all non-emergency repairs and restoration activities, the latter of which must be approved by the Town Council as compliant with interests of the Town, as expressed in the reversionary terms of the deed. If, however, a comprehensive restoration plan is developed, presented to the Town Council and approved by that body, all future restoration activities not inconsistent with the plan shall be deemed approved by the Town and not subject to further Town Council action. All repairs and restoration activities shall be done in a workmanlike manner, and in making any repairs or conducting any restoration activities, the DBDA or non-profit, as applicable, shall comply with the relevant North Carolina State Building Code, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws.

5. The DBDA will promptly undertake to establish a fund-raising campaign to retire the debt reated by this loan, and to accomplish the full repair, restoration and at least initial operation of the restored property. The DBDA may accomplish this through the creation of a non-profit entity created for this purpose, if the structure of such non-profit is agreed upon by both parties. Such structure must provide for full accountability of all funds raised or collected and transparency in its operation. Details of the fundraising campaign shall be disclosed on a regular and no less than quarterly basis by the DBDA to the Town Council, but if one or more non-profits is created and authorized for this purpose, the DBDA may delegate this responsibility to a non-profit. The DBDA must approve the details of any fundraising campaign undertaken, pursued or administered by a non-profit, and must specifically approve the costs and other provisions of each consulting contract proposed by the non-profit. The Funds thus obtained shall be used by the DBDA first to pay for repairs needed to prevent further deterioration or damage to the property; second, to at least temporarily improve the appearance of the facade of the property; third, to make such alterations and repairs which may be needed to make a portion of the property usable by the DBDA during the period during which the full repair and restoration is conducted; and fourth, to support and perpetuate the fund-raising campaign, including if needed, to support the retention of consultants or staff for this purpose. Until such time as the Town has been fully repaid the principal amount due pursuant to this MOU along with all accrued interest, all additional funds raised, and, unless expressly waived by the Town Council in any particular quarter, no less than thirty percent (30%) of the total funds raised during each quarter shall be used to pay or prepay the remaining balance of the loan, with payments remitted no less frequently than quarterly until the full principal and all accrued interest is paid in full. Thereafter, upon approval of the DBDA board, the DBDA may itself recover the funds which it has committed to the purchase and repair, alteration or restoration of the property from the proceeds of the fundraising campaign.

6. During the time the loan is outstanding, should the Town experience a drastic decrease in revenue, as determined by the Town in its sole discretion, whether by a reapportionment of sales tax within Watauga County, or from other unknown or presently unanticipated cause, the Town may call due the full balance of principal and accrued interest. Thereafter, from notice by the Town, the DBDA shall have six calendar months to fully pay the remaining balance, and should it fail to do so, it will be considered to be in default of its obligations, and its legal and beneficial rights in the property shall terminate without further action by the Town except as herein provided.

7. Should the DBDA default in any non-monetary obligation described hereunder and fail to cure the default within the time afforded it, or should the DBDA fail to meet its monetary obligations created by this MOU, the Town may announce its intention to place the property for sale and shall notify the DBDA of same. Prior to placing the property for sale to the general public, the Town shall provide the DBDA a thirty day period in which to produce a buyer for no less than the remaining balance of the loan. To be acceptable to the Town, such buyer must be endorsed by the DBDA and must agree to repair and restore the property, preserve the restored property and operate it in such fashion, as directed and authorized by the Town and in accordance with the wishes of the DBDA and consistent with this MOU, so that it will serve a public purpose in perpetuity.

8. Once the Town has announced its intention to place the property for sale and thirty days passes during which the DBDA has neither paid the balance nor produced a buyer endorsed by the DBDA who will pay the balance and agree to the necessary conditions, then the Town may offer the property for sale, through whatever means it deems expedient or desirable, by private or public sale, as it in its sole discretion determines will best effectuate the Town’s purposes, and if

an offer is received which the Town wishes to accept, it will so notify the DBDA of its intention to accept such offer. The DBDA shall then have a period of thirty (30) days to pay an amount equal to the offer which has been received, and if the DBDA pays the required amount within that time, the Town shall transfer the property to the DBDA, retaining reversionary rights as previously described. If the DBDA does not offer an amount equal to the offer which has been received within the thirty (30) days, the Town may then sell the property in accordance with the offer which has been received, without restriction as to the future use or preservation of the property, and the Town is hereby authorized to withhold from future MSD funds, up to and including the full amount of MSD funds collected each year, amounts sufficient to fully repay itself the balance of the loan, calculated after crediting all payments made by the DBDA and the net proceeds of any sale.

IN WITNESS WHEREOF, the **parties** have executed this Agreement in duplicate originals, and agree to all of the terms and conditions set forth above, the day and year first above written.

VOTE: Aye - All
Nay - None

PUBLIC COMMENT

Mayor Clawson informed the audience that the "Public Comment" period is limited to 15 minutes and noted that due to the number of persons signed up to speak, each speaker would be allotted a two-minute limit. She stated that seven speakers would be heard during this time and that the remainder of the speakers would be heard after the conclusion of the regular meeting agenda.

The first speaker was Bob de Camera who spoke against the proposed changes to decibel levels in the Town's noise ordinance. He stated that the Town should support music, consider the impact of this action on the Town, and consider safety issues due to any changes to the noise ordinance.

Lynn White, of Wintergreen Lane, spoke regarding the new Marriott Hotel on Highway 105. She voiced her concern regarding the buffer between the site and the residences of lower Wintergreen Lane.

Mark Dixon stated that he has measured the wind noise outside his establishment, and it is louder than what is allowable under the proposed changes for outdoor patios and decks. He stated the proposed changes will have unintended consequences.

Mike McKee spoke against the proposed changes to the noise ordinance. He stated that he feels the proposed regulations are targeting activity instead of noise.

Colton Lentz, owner of Char Restaurant, voiced his opposition of the proposed changes to the noise ordinance. He stated that these changes will destroy a vibrant music scene in downtown Boone.

Ellen Gwin asked the Council not to place the proposed restrictions on music in downtown Boone. She stated that this will effect others that work in the service industry in downtown Boone.

Travis Reyes stated that ASU students need "something to do" and urged the Council to consider the "big picture."

Mayor Clawson reiterated that others signed up to speak would be heard after the conclusion of the regular agenda items at the end of the meeting.

PRESENTATION OF P&I MONTHLY REPORT AND ON-GOING DISCUSSION OF UDO TABLE OF PERMITTED USES

Planning Director Bill Bailey presented the P & I Monthly report **(permanently on file in the**

January 2012 Town Council Packet.) He stated that staff is continuing to meet with the Planning Commission and Planning Commission Subcommittee to work on the Table of Permitted Uses and that he plans to present the proposed changes at the annual Planning Retreat in March.

AFFORDABLE HOUSING TASK FORCE PRESENTATION - FAMILY-ORIENTED MULTI-FAMILY HOUSING STANDARDS

Town Attorney Sam Furgiuele stated that the Affordable Housing Task Force has been brainstorming ideas for criteria which might make multi-family housing more attractive for families or others in need of affordable housing options. He explained that the task force will continue in this vein if directed to do so by the Council. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to endorse the idea for guidelines to encourage multi-family housing for families and others in need of affordable housing and directed the Affordable Housing Task Force to continue work on this matter.

VOTE: Aye - All
Nay - None

DISCUSSION ON B-1 ZONING DISTRICT SETBACKS

Town Attorney Sam Furgiuele began discussion by explaining that questions about setbacks in the B-1 zoning district came about as a result of a project that is being planned for King Street. He stated that during that discussion, it was determined by the Planning Staff that there are inconsistencies in the UDO for development in the B-1 district. He stated that no setbacks requirements for B-1 zones are not specifically set forth in the UDO. Planning Director Bill Bailey agreed that there is no guidance for side setbacks in the B-1 zone. Mr. Furgiuele also listed the issue of the secondary height of buildings in this zoning district, along with other issues, that need further examination. Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to direct the Town Attorney, in conjunction with the Planning Staff, to draft language regarding inconsistencies in the B-1 zoning district to be presented to the Council for consideration.

VOTE: Aye - All
Nay - None

DISCUSSION & POSSIBLE ACTION OF CODE AMENDMENT - FIREARMS IN TOWN PARKS

Town Attorney Sam Furgiuele informed the Council of recent action by the General Assembly, which was made effective in December 2011, to allow persons carrying legally-concealed handguns almost everywhere. He explained that the General Assembly gave a local option for local governments to adopt a resolution for the posting of a prohibition for carrying a concealed handgun in local government buildings and pertinent premises, including recreational facilities, which include playgrounds, swimming pools, and athletic fields. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to authorize the Town Attorney to draft as expansive language as possible that will limit the availability of concealed weapons on Town property and recreational areas.

VOTE: Aye - All
Nay - None

ADOPTION OF RESOLUTION - APPROPRIATION OF FUNDING FOR DESIGN OF NEW ROAD

Town Manager Greg Young presented information for a request from Joe Laws of the NC Department of Transportation for a Resolution of Support from the Town of Boone for the preliminary engineering designs for the expansion of State Road 1148 (Homespun Hills Road.) He explained that officials from Appalachian State University have determined that there is a need for a secondary access road to the campus and that such a road will help to alleviate traffic congestion on major thoroughfares during special events held on campus. He directed the

Council's attention to the draft resolution and information contained in the supplemental packet **(copy permanently on file.)** Council Member Mason expressed a concern with the effect of this project on residents within the Homespun Hill neighborhood and why the use of Poplar Grove Road is not being considered. Public Works Director Blake Brown stated that officials from ASU have not appeared before the Town to make a formal presentation regarding this request. Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to ask officials from ASU to make a presentation to the Council regarding the necessity of this project and any efforts to contact the residents of the Homespun Hills neighborhood for feedback to the proposed project.

VOTE: Aye - All
Nay - None

AMENDMENT TO CONTRACT - ENGINEERING CONTRACT FOR RAW WATER INTAKE PROJECT

Town Manager Greg Young presented amendments to the engineering contract with W.K. Dickson for the Water Intake Project. He explained the following changes:

$ Additional $40,000 for Reclassification
$ Additional $18,000 for Property Rights Survey
$ Additional $60,500 for Environmental Permitting
$ Additional $37,500 for NC DOT required Geotechnical Investigation
$ Additional $35,000 for NC DOT required Survey/Design
$ Additional $11,000 for Mussel Relocation
$ **Total of $202,000**

Council Member Mason inquired as to the reason why these considerations were not originally anticipated. David Pond, engineer with W.K. Dickson, stated that when the contract was originally signed in 2008, there were unforeseen items that could not be anticipated at that time. Council Member Brantz asked when construction was anticipated to begin. Mr. Pond stated that construction is slated for fall of 2012. Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to approve the amendments to the engineering contract with W.K. Dickson for the Water Intake Project as presented.

VOTE: Aye - All
Nay - None

APPROVAL OF BID - WILSON DRIVE TRANSPORTATION IMPROVEMENTS

Town Manager Greg Young presented the Council with a list of bids submitted for the Wilson Drive Project **(list permanently on file in the January Town Council Packet)** and a recommendation from Vaughn & Melton for a bid from Blythe Development Company in the amount of $248,414.000. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to award the bid for the Wilson Drive Project to Blythe Development Company in the amount of $248,414.000.

VOTE: Aye - All
Nay - None

SCHEDULE SPECIAL MEETING - ANNUAL PLANNING RETREAT

Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to schedule the annual Planning Retreat for Wednesday, March 28, 2012, beginning at 8:30 a.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye - All
Nay - None

Planning Director Bill Bailey stated that he will present the annual department report and that the Council will receive annual reports from the various committees in the morning session. He

stated that the afternoon session is reserved for discussion of the Table of Permitted Uses and overlay districts.

SCHEDULE SPECIAL MEETING - ANNUAL TOWN COUNCIL RETREAT

Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to schedule the annual Town Council Retreat for Monday, April 2, 2012, beginning at 8:30 a.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye - All
Nay - None

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the monthly water status report **(copy permanently on file in January 2012 Town Council packet)**.

APPROVAL OF BUDGET AMENDMENTS

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approve the following budget amendment:

DESCRIPTION	ACCOUNT #	TO:	FROM:
MAINTENANCE & REPAIR-EQUIPMENT (WTP)	030-700-804-525201	$5,995	
MISCELLANEOUS REVENUE-W/S FUND	030-000-000-489900		($5,995)

VOTE: Aye - All
Nay - None

Mayor Clawson declared a break at 7:56 p.m. Council reconvened at 8:05 p.m.

PUBLIC COMMENT - CONTINUED

Christian Smith, member of a local band, stated that he feels the proposed decibel levels are unfair and that the Town should be supportive of art and local businesses.

Rob Brown stated that he feels that the Council should encourage cultural richness in downtown and that the Council expand the proposed decibel levels.

David Brewer, a local writer and bartender, voiced his opposition to the proposed decibel levels and stated that the proposed noise ordinance will damage the local music scene.

Alex Golden, a student and musician, stated that the live music scene in downtown Boone provides for a social and cultural learning experience.

Scott Williford stated that he feels the proposed changes to the noise ordinance will ultimately lead to a loss of culture in the downtown and a loss of revenue for the town. He asked that the Council reconsider the proposed decibel levels.

Kevin Freeman, a local business owner and musician, stated that the proposed decibel levels are unreasonable.

Susan Stelling appeared to remind Mayor Clawson of past campaign statements regarding supporting local businesses and her commitment to downtown Boone.

Christine Varipapa stated that she wants live music to be able to continue in Boone and that live music is part of Boone's culture and uniqueness.

Judy Humphrey, a longtime resident of the Grand Boulevard neighborhood, stated that she has

had to contact the Boone Police Department numerous times on Friday, Saturday, and Sunday nights. She stated that she feels that Boone needs a noise ordinance for the protection of the residential neighborhoods.

Terry Taylor, a resident of Grand Boulevard, stated the purpose of the noise ordinance is to protect neighborhoods, especially during the hours when people sleep. He asked the Council to use good judgment in adopting an effective noise ordinance.

Doug James, a music professor at ASU and professional musician, stated that he does not understand why the decibel level is a problem in downtown Boone and feels that Boone has a tolerance problem.

RECESS MEETING

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to recess the meeting until Thursday, January 19, 2012, at 6:30 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye - All
Nay - None

CALL TO RECONVENE

A recessed meeting from January 17, 2012 was called to order at 6:30 p.m., Thursday, January 19, 2012, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Jamie Leigh, Lynne Mason, Alan Scherlen, Andy Ball, and Rennie Brantz. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kimberly Brown, Assistant to the Town Manager Jim Byrne, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, Planning Director Bill Bailey, Planner Jane Shook, and Downtown Development Coordinator Pilar Fotta.

ANNOUNCEMENTS

Mayor Clawson called the meeting to order and welcomed all in attendance. She noted that anyone wanting to speak during the public comment session would need to sign the public comment sign-up sheet.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young noted that there were no changes to the agenda. Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to adopt the agenda as presented.

VOTE: Aye - All
Nay - None

PUBLIC COMMENT

Mayor Clawson noted that due to the number of persons signed up to speak, each speaker will be limited to a three-minute time limit.

The first speaker was Colton Lentz who began by asking the Council for a reasonable and fair set of regulations to abide by in regard to the noise ordinance. He listed three points that he feels warrant further discussion from the proposed noise ordinance: the determination for a violation, noise measurement, and decibel level guidance.

Lynne White spoke in regard to the new Marriott Hotel on Highway 105 and the buffer between the site and the Wintergreen Lane neighborhood. Ms. White contended that the buffer is not in compliance with the UDO or the agreement set forth between Marriott officials and the Town of Boone.

Allan White reiterated that the buffer between the new Marriott and his neighborhood is not

adequate. He stated that there are no trees taller than 15 feet. He invited anyone interested to come to his residence to view the buffer.

Scott Haynes, an 11-year resident of the town, stated that he has a degree in audio engineering. He stated that the proposed decibel level is too low for the town and asked the Council to reconsider the regulations.

Jesse Miller stated that the proposed changes will have a detrimental effect on the culture of the downtown area and that Boone is known for the local music scene.

Liz Aycock thanked the Council for the improvements that have been made to the downtown, including street lighting and waste receptacles but asked the Council to help local, small businesses by not enacting regulations that will have a harmful effect on the downtown.

Deacon Sinanian spoke in regard to the effect that proposed changes to the noise ordinance will have on local students from Watauga High School.

Randy Kelly informed the Council that he had experienced the same issue regarding noise with P.B.Scott's in Blowing Rock. He advised the Council that [ASU] students leave when there is nothing for them to do and reiterated that Council should seek a reasonable compromise on this issue.
Jeffrey Deal listed some benefits of live music, including social and economic benefits, and asked that the Council work toward a fair and reasonable compromise.

Jannele Vaquera, owner of the Lucky Penny, stated that any negative effect on the live music scene in downtown will have an adverse effect on her business in that she sells clothing to people who attend those events.

Terry Taylor stated that he does not want any businesses to close within the downtown area but he would like to see local businesses be good neighbors when considering the impact on adjacent residential neighborhoods. He pointed out that part of the problem may be that older buildings located in the downtown are under-insulated for such uses as live music.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Clawson announced that there are three positions on the Jones House Advisory Board with terms that expire on February 28, 2012.

BOARD APPOINTMENTS

Affordable Housing Task Force

There were no applications submitted for the vacant positions.

Board of Adjustment

There were no applications submitted for the vacant positions.

Community Appearance Commission

There were no applications submitted for the vacant positions.

Greenway, Parks & Gardens Committee

Mayor Clawson noted that two applications have been submitted for the vacant community member position on this committee. The applications received were from Selena Hilemon and Randall Gonzalez. Mayor Clawson opened the floor for nominations for the position. Council Member Mason nominated Randall Gonzalez. Council Member Ball nominated Selena Hilemon. With no other nominations, Mayor Clawson called for a vote on each nomination:

Randall Gonzalez - 3 (Scherlen, Mason, Brantz)

Selena Hilemon - 2 (Leigh, Ball)

By unanimous vote, Randall Gonzalez was appointed to serve on the Greenway, Parks and Gardens Committee.

Planning Commission

There were no applications received for the vacant position.

Tree Board

There were no applications received for the vacant positions.

Water Study Committee

There were no applications received for the vacant positions.

REQUESTED APPEARANCES - COMBS, TENNANT & CARPENTER PC

Mr. Jason Carpenter of Combs, Tennant and Carpenter appeared before Council to present the audit report for fiscal year 2010/2011. Mr. Carpenter said Town staff does an excellent job in managing the Town's funds. He stated that both fund balances for the General Fund and the Water & Sewer Fund are very healthy and that it is wise to be conservative during these difficult economic times.

REQUESTED APPEARANCES - REBECCA KAENZIG/DANIEL BOONE NATIVE GARDENS

Rebecca Kaenzig, chair of the Daniel Boone Native Gardens Board of Governors, presented the annual report on the activities and finances for the Daniel Boone Native Gardens **(copy of full report permanently on file in the January Town Council packet.)** Brief discussion ensued regarding the increasing financial needs of the gardens and ways to increase revenue. Ms. Kaenzig thanked the Council for the in-kind services that the gardens receive from the Town.

REQUESTED APPEARANCES - JENNIFER HERMAN/OASIS

Jennifer Herman, director of OASIS, Inc., appeared before the Council to request approval for the Town to submit a CDBG grant application on behalf of the organization for the purpose of providing a transitional housing option. She explained that the grant will be for up to $500,000 for a three- bedroom unit. Assistant to the Manager Jim Byrne indicated that the Town will not have to provide a match for the grant but will be responsible for administering the grant. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approve the request from OASIS, Inc. for the Town of Boone to apply for a grant in the amount of up to $500,000 for transitional housing.

VOTE: Aye - All
Nay - None

REQUESTED APPEARANCES - JUDITH PHOENIX/GREENWAY COMMITTEE

Judith Phoenix, a member of the Greenway Committee, appeared before the Council to discuss the dangers of pet waste. She stated that pet waste is a serious threat to the community in that it contains ringworm and e. coli as does human waste. She stated that pet waste is not a type of fertilizer and does not easily biodegrade. Ms. Phoenix indicated that during discussion by the Greenway Committee, it was determined that a public information campaign and more educational signs along the Greenway Trail system will be beneficial. She also stated that the Committee has discussed the use of volunteers to pick up pet waste along the trail. Mayor Clawson and members of the Council thanked Ms. Phoenix for the presentation of information.

REQUESTED APPEARANCES - RANDY MCDONOUGH/GREENWAY COMMITTEE

Randy McDonough, chair of the Greenway Committee, appeared before the Council to present the recommendation from the Committee for the consideration of the dangers of pet waste. He explained that the Committee is recommending the following action for consideration:

1. Public service announcements.
2. Educational program.
3. Penalty phase/substantial fine for failure to pick up pet waste per a town ordinance.

Public Works Director Blake Brown stated that additional pet waste stations can be placed along the trail but that he does not want to introduce any unnecessary clutter along the trail. He stated that the committee has discussed ways to monitor the Greenway Trail and Town Parks with the use of volunteers. Police Chief Dana Crawford stated that his department does not have enough manpower to be effective in this type of enforcement. It was the consensus of the Council to continue to encourage compliance through education. Upon a motion by Council Member Leigh, seconded by Council Member Mason, Council moved to increase the disposable bags for pet waste along the Greenway Trail, to authorize the Greenway Committee to continue to work on the education aspect of the dangers of pet waste, and to revisit the idea of fines or penalties if necessary.

VOTE: Aye - All
Nay - None

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to enter Closed Session at 7:40 p.m. pursuant to NCGS 143-318.11a)3)5) to hear the following items:

-Update on Lawsuit against the Town of Boone.
-Consideration of ADR Capital Settlement Proposal.
-Legal Advice - Water Intake.
-Update on Special Legislation for On-Premise Alcohol Consumption.
-Property Acquisition.
-Legal Advice - USDA Contract.
-Settlement Offer - Gang of Five LLC.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to exit Closed Session at 9:17 p.m.

VOTE: Aye - All
Nay - None

ADJOURNMENT

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to adjourn at 9:18 p.m.

VOTE: Aye - All
Nay - None

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Deputy Town Clerk Mayor